

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONSANTO COMPANY and)
MONSANTO TECHNOLOGY LLC,)
)
Plaintiffs,)
)
vs.)
)
E.I. DU PONT DE NEMOURS AND) Case No. 4:09-cv-686 ERW
COMPANY and)
)
PIONEER HI-BRED INTERNATIONAL,)
INC.,)
)
Defendants.)

PLAINTIFFS' MOTION TO STRIKE TESTIMONY OF LOUIS P. BERNEMAN

Plaintiffs, Monsanto Company and Monsanto Technology LLC (collectively “Monsanto”), by and through its counsel of record, respectfully move this Court for the entry of an order striking the testimony of Louis P. Berneman, expert witness for Defendants, E.I. du Pont de Nemours and Company and Pioneer Hi-Bred International, Inc. (collectively “Defendants”). In support of this Motion, Monsanto hereby incorporates its memorandum in support as if fully stated herein.

Immediate relief is proper and should be granted before the parties are required to spend resources to obtain additional discovery concerning Mr. Berneman’s opinions (such as a deposition) because it is black letter law that offering the opinions contained in his report is improper and inadmissible. *See Eniva Corp. v. Global Water Solutions, Inc.*, 440 F. Supp. 2d 1042, 1052 (D. Minn. 2006) (stating motion to exclude expert filed before expert’s deposition was not premature because expert report requirement “is intended to allow the opposing party, if he or she chooses, to dispense with the expert’s deposition”); *Beck v. Pride Int’l, Inc.*, No. G-07-

0270, 2008 WL 5068704, at *2 (S.D. Tex. Nov. 21, 2008) (denying request for additional time to depose expert as deposition “would have been an unjustified waste of time and expense because she would not be allowed to testify as an expert in this case”).

WHEREFORE, Monsanto respectfully requests that this Court grant Monsanto’s motion to strike Mr. Berneman’s anticipated expert testimony, award Monsanto all of its attorneys’ fees and expenses in filing and arguing this Motion, and grant such other and further relief that the Court deems just and proper.

Dated: December 16, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of December, 2011, the foregoing was filed electronically with the Clerk of the Court for the United States District Court for the Eastern District of Missouri, Eastern Division, and was served by operation of that Court's electronic filing system, upon the following:

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